

a sample vessel;
a sample vessel holder, adapted to receive at least one said sample vessel and maintain said sample vessel in a position such that the longitudinal axis of said sample vessel extends at an angle substantially less than 90 degrees with respect to the horizontal;
a stirrer within said sample vessel; and
a magnet driver, adapted to move a magnet proximate to an outer surface of said sample vessel to permit said magnet to impose a magnetic influence on said stirrer to move said stirrer in said sample vessel.

REMARKS

Claims 1-10 are in the present application.

Applicants have cancelled Claims 11-18 without prejudice but reserve the right to file a divisional application to the subject matter of these claims. Applicants have amended Claim 1 in order to further clarify the subject matter of the present invention. This amendment is fully supported in the present Specification. The main Claim 1 as amended is directed to a system for stirring a solid suspended in a liquid in a sample vessel, said system comprising: a sample vessel; a sample vessel holder, adapted to receive at least one said sample vessel and maintain said sample vessel in a position such that the longitudinal axis of said sample vessel extends at an angle substantially less than 90 degrees with respect to the horizontal; a stirrer within said sample vessel; and a magnet driver, adapted to move a magnet proximate to an outer surface of said sample vessel to permit said magnet to impose a magnetic influence on said stirrer to move said stirrer in said sample vessel.

Claims 1-10 have been rejected under 35 U.S.C. § 102 (b) as being allegedly anticipated by Karkos, Jr. et al. Claims 1 and 5-10 have been rejected under 35 USC § 102(b) as allegedly anticipated by Ullman. The cited references do not teach or anticipate the claimed invention as amended.

Karkos, Jr. et al. do not disclose or teach a sample vessel that extends at an angle substantially less than 90 degrees, as in the claimed invention. The "vessel" disclosed in Karkos, Jr. et al is at an angle of exactly 90 degrees (see Fig. 2 and 4 therein).

With respect to Ullman, in this reference, there is no stirring (see Col. 1, Line 11). In addition, in Ullman, there is a requirement that the magnet (or magnet driver) must itself either move in a programmed or periodic fashion, or be altered in its magnetic strength in a programmed or periodic fashion (see Col. 3, Lines 10-13; and Col. 7, Lines 2-3). Ullman cannot function without one of these occurring.

Although the claims have been rejected as anticipated under 35 U.S.C. § 102 on the disclosure of each of Karkos, Jr. et al. and Ullman, it is axiomatic that anticipation under Section 102 requires that the prior art reference disclose every element of the claim. In re King, 801 F.2d 1324, 1326, 231 U.S.P.Q. 136, 138 (Fed. Cir. 1986). Thus there must be no differences between the subject matter of the claim and the disclosure of the prior art reference. Stated in another way, the reference must contain within its four corners adequate directions to practice the invention. The corollary of this rule is equally applicable. The absence from the reference of any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 1571, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986).

Here it is clear that Claim 1 as amended and the rejected claims dependent thereon distinctly differ from each of Karkos, Jr. et al. and Ullman. Clearly, Kloster Speedsteel shows that Karkos, Jr. et al. and Ullman fall short of the statutory standard of 35 U.S.C. Section 102. Claims 1-10 are not anticipated by Karkos, Jr. et al. and Ullman. Withdrawal of the instant rejection under Section 102 is therefore respectfully requested.

Thus, the claims of the present application are believed to be in condition for allowance. Early notice thereof is respectfully requested by Applicants.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with markings to show changes made".

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce S. Weintraub", with a stylized flourish at the end.

Bruce S. Weintraub
Attorney for Applicants
Registration No. 34,277

Becton Dickinson and Company
1 Becton Drive
Franklin Lakes, New Jersey 07417
(201) 847-7096

#65932

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claim 1 has been amended as follows.

1. (Amended) A system for stirring a solid suspended in a liquid in a sample vessel, said system [sample vessel including a stirrer;] comprising:
 - a sample vessel;
 - a sample vessel holder, adapted to receive at least one said sample vessel and maintain said sample vessel in a position such that the longitudinal axis of said sample vessel extends at an angle substantially less than 90 degrees with respect to the horizontal; [and]
 - a stirrer within said sample vessel; and
 - a magnet driver, adapted to move a magnet proximate to an outer surface of said sample vessel to permit said magnet to impose a magnetic influence on said stirrer to move said stirrer in said sample vessel.